IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7359 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARUCH ZILLA ADARSH SAMAJ SEVA MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7359 of 2005

MR BAIJU JOSHI for Petitioner No. 1

MR DIPEN DESAI, AGP for Respondent No. 1

MR MITUL SHELAT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/05/2005

ORAL JUDGEMENT

#. In this petition, notice is already issued for final

disposal. Under the circumstances, the present Special Civil Application is being disposed of finally with the consent of the parties today.

#. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction directing respondent No.2 - South Gujarat University to grant / process affiliation in favour of the petitioner - Trust forthwith so as to enable the present petitioner - Trust to start self financed B.Ed. College for the academic year 2005-2006 at Mangrol as indicated in the letter dated 25.02.2005 of the National Council for Teachers' Education ("NCTE" for short).

#. It is the case of the petitioner that as the petitioner wanted to start new B.Ed. college at Mangrol, the petitioner applied for NOC from the State Government and the State Government granted NOC for allowing the petitioner - Trust to start new B.Ed. college for the academic year 2002 - 2003. It is the case of the petitioner that NCTE has now granted approval under the provisions of National Council Teachers Education Act, 1993 to start self financed B.Ed. college at Mangrol for the academic year 2005-06. It is the case of the petitioner that one of the conditions imposed by the NCTE is that the petitioner has to get affiliation in respondent no. 2 - South Gujarat University and upon receipt of the letter dated 25.02.2005 by the NCTE granting approval to the petitioner to start self financed B.Ed. college for the academic year 2005-2006, the petitioner addressed a letter dated 02.03.2005 to respondent no.2 - University and intimated about the approval dated 25.02.2005 and requested to grant affiliation. It is the case of the petitioner that the petitioner - Trust received a letter dated 12.03.2005 whereby the petitioner - Trust is informed that in view of the resolution passed by the State Government, no local Inquiry Committee can be sent to the college and the circular referred to in the letter dated 04.03.2005 was also enclosed along with the said letter whereby it is stated that now the State Government has taken the policy decision not to grant NOC to start self-financed B.Ed. college in the State of Gujarat from the academic year 2005-2006.

#. The petitioner further submitted that by letter dated 11.04.2005, it was requested by the petitioner - Trust to grant affiliation by pointing out that the State Government has already granted NOC on 28.12.2001 and that it is old case wherein NOC is granted by the State

Government, and, therefore requested that the policy of the State Government will not be applicable so far as the petitioner - Trust is concerned, and, therefore, requested to grant affiliation. However, as no affiliation is granted and the application of the petitioner is not considered by respondent no.2 University on merits because of the policy decision taken by the State Government not to grant NOC for starting new B.Ed. college in the State of Gujarat from the academic year 2005-2006, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

#. Mr.Shirish Joshi, learned advocate appearing for the petitioner, has submitted that the University straightaway cannot refuse to consider the application of the petitioner for affiliation on the ground that the State Government has taken the policy decision not to grant NOC for starting new B.Ed. college in the State of Gujarat from academic year 2005-2006. He further submitted that as per Section 34 of South Gujarat University Act, 1965 (hereinafter referred to as `the Act'), after holding inquiry with regard to the need of new college in the locality and requirement of sub-clause (b) of sub-clause (1) of sub-section (3) of Section 34, the Syndicate is required to direct the local inquiry to be made by the competent person and the Syndicate is thereafter to record its opinion, after consulting the Academic Council on the question whether the application is to be granted or refused and thereafter the Registrar shall submit the application and all the proceedings to the State Government which, after such inquiry as may appear it to be necessary, shall grant or refuse the application or any part thereof. It is, therefore, submitted that straightaway the University - respondent no.2 ought not to have refused to consider the application of the petitioner for affiliation only on the basis of the policy decision of the State Government not to grant NOC for starting new B.Ed. college from the academic year 2005-2006 and accordingly it is requested to allow the present Special Civil Application.

#. In response to the notice issued by this Court, Mr.Dipen Desai, learned A.G.P. appears on behalf of the State Government and Mr.Mitul Shelat appears for respondent no.2 - South Gujarat University. It is submitted that it is ultimately for the State Government to grant affiliation or not even after considering the report submitted by the Registrar and therefore, on the basis of the policy decision taken by the State Government not to grant NOC to start new B.Ed. college

from the academic year 2005-2006 on the ground that there is no more requirement of teachers / B.Ed. candidates for the purpose of teaching and existing strength will be sufficient if the decision is taken by the University, it cannot be faulted with, and, therefore it is requested to dismiss the present Special Civil Application.

#. Heard the learned counsel for the parties.

#. Section 34 of the Act reads as under :

"34. Affiliation - (1) A college applying for affiliation to the University shall send a letter of application to the Registrar, and shall satisfy the Syndicate and the Academic Council -

(a) that the college will supply a need in the locality, having regard to the type of education intended to be provided by the college, the existing provision for the same type of education made by other colleges in the neighbourhood, and the suitability of the locality where the college is to be established;

(b) that the college is to be under the management of a regularly constituted governing body;

(c) that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college;

(d) that the buildings in which the colleges is to be located are suitable, and that provision will be made, in conformity with the Ordinances for the residence in the college or in lodgings approved by the college, of students not residing with their parents or guardians, and for the supervision and welfare of students;

(e) that due provision has been made or will be made for a library;

(f) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the Statutes, Ordinances and Regulations for imparting instruction in that branch of science in a

properly equipped laboratory or museum;

(g) that due provision will, as far as circumstances may permit, be made for the residence of the Principal and some members of the teaching staff or near the college or the place provided for the residence of the students;

(h) that the financial resources of the college are such as to make due provision for its continued maintenance and efficient working ; and

(i) that the college rules fixing the fees (if any) to be paid by the students have not been so framed to involve such competition with any existing college in the same neighbourhood as would be injurious to the interests of educations.

(2) The application shall contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirements not being fulfilled or continued to be fulfilled shall be forthwith reported to the Syndicate.

(3) On receipt of a letter of application under sub-section (1) the Syndicate shall -

(a) direct a local inquiry to be made by a competent person or persons authorized by the Syndicate in this behalf in respect of the matters referred to in sub-section (1) and such other matters as may be deemed necessary and relevant;

(b) make such further inquiry as may appear to it to be necessary;

(c) give due consideration to the request, if any, made by the applicant for a reconsideration of any of the conditions conveyed to him;

(d) record its opinion after consulting the Academic Council on the question whether the application should be granted or refused either in whole or in part, stating the result of any inquiry under clauses (a), (b) and (d) of sub-section (1)

(4) The Registrar shall submit the application and all proceedings, if any, of the Academic Council and the Syndicate relating thereto, to the State Government which, after such inquiry as may appear to it to be necessary, shall grant or refuse the application or any part thereof.

(5) Where the application or any part thereof is granted, order of the State Government shall specify the courses of instruction in respect of which the college is affiliated, and, where the application or any part thereof is refused, the grounds of such refusal shall be stated.

(6) As soon as possible after the State Government makes its order, the Registrar shall submit to the Senate a full report regarding the application, the action taken thereon under sub-sections (3) to (5) and of all proceedings connected therewith.

(7) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (4)."

#. Considering the aforesaid provision, a college applying for affiliation to the University shall send a letter of application to the Registrar and shall satisfy the syndicate and the Academic Council that the college will supply the need in the locality having regard to the type of education indicated to be provided by the college, the existing provision for the same type of education made by other colleges in the neighbourhood and the suitability of the locality where the college is to be established; that the college is to be under the management of a regularly constituted governing body; that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the course of instruction, teaching or training to be undertaken by the college; that the buildings in which the colleges is to be located are suitable, and that the provision will be made, in conformity with the Ordinances for the residence in the college or in lodgings approved by the college, of students not residing with their parents or guardians, and for the supervision and welfare of students; that due provision has been made or will be made for library; that financial resources of the college are such as to make due provision for its continued maintenance and efficient working and that college rules including fees (if any) to be paid by the students have not been so framed to

involve such competition with any existing college in the same neighbourhood as would be injurious to the interests of educations. The application shall contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirements not being fulfilled or continued to be fulfilled shall be forthwith reported to the Syndicate. On receipt of a letter of application, the Syndicate is required to direct a local inquiry to be made by a competent person or persons authorized by the Syndicate in this behalf in respect of the matters referred to hereinabove and such other matters as may be necessary and relevant. The Syndicate may direct for such further inquiry as may appear to it to be necessary and the Syndicate shall record its opinion after consulting the Academic Council on the question whether the application should be granted or refused either in whole or in part stating the result of any inquiry under Clauses (a), (b) and (d) of sub-section (1) and thereafter the Registrar shall submit the application and all proceedings, if any, of the Academic Council and the Syndicate relating thereto, to the State Government which, after such inquiry as may appear to it to be necessary, shall grant or refuse the application or any part thereof. Under the circumstances, it is ultimately for the State Government to take decision on the basis of the application and / or proceedings, if any, of the Academic Council or the Syndicate. Under the circumstances, straightaway not to consider the application of the petitioner for affiliation only on the basis of the policy decision taken by the State Government not to grant NOC for starting new B.Ed. college from the academic year 2005-2006 is not in accordance with Section 34 of the Act. Under the circumstances, respondent no. 2 is directed to consider the application of the petitioner for affiliation in light of section 34 of the Act and directed to hold inquiry and Registrar of respondent no.2 is directed to submit the application and all the proceedings, if any, of the Academic Council and the Syndicate to the State Government and thereafter the State Government is directed to take appropriate decision on merits and in accordance with law. The respondent no.2 - University is directed to complete these proceedings as required under Section 34 of the Act and submit an application and proceedings, if any, of the Academic Council and the Syndicate to the State Government as early as possible preferably within a period of two months from the date of receipt of the writ of this order and thereafter the State Government is directed to take appropriate decision

on merits and in accordance with law within a period of one month from the date of receipt of the application and the proceedings, if any, of the Academic Council and the Syndicate relating to the petitioner applicant. It is further made clear that this court has not expressed any opinion on merits of the case and it is ultimately for the State Government to take appropriate decision on merits and in accordance with law considering the need and suitability of the locality and other relevant aspects relating thereto.

##. For the reasons stated above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)